



**BEFORE THE
STATE OF WISCONSIN
Division Of Hearings And Appeals**

In the Matter of the 1988 Chevrolet, VIN
1G1YY2184J5117105, Purchased by John S. Gibson.

Case No.: 97-H-1012

FINAL DECISION

John S. Gibson applied to the Department of Transportation for a title and registration to the 1988 Chevrolet Corvette which is the subject of this hearing. By letter dated December 10, 1996, the Department refused to issue a title or registration to Mr. Gibson for the subject vehicle. By letter dated January 7, 1997, Mr. Gibson filed a request for hearing pursuant to sec. 342.26, Stats., with the Division of Hearings and Appeals. In response to the request, a prehearing conference was scheduled. At the prehearing conference, the parties agreed the matter could be decided on the basis of stipulated facts and written argument.

The parties filed a stipulation of facts on March 25, 1997. The petitioner filed his initial brief on April 10, 1997; the Department of Transportation filed a response brief on April 14, 1997; and, the petitioner filed a reply brief on April 28, 1997.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

John S. Gibson, petitioner, by
Attorney Charles W. Giesen, and
Attorney Scott E. Mickelson
PO Box 909
Madison, WI 53701

Wisconsin Department of Transportation, by
Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on May 29, 1997. No objections to the proposed decision were filed. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

The parties filed a stipulation of facts. The stipulation included the following relevant facts:

1. John S. Gibson is an adult resident of the State of Wisconsin, residing at 97 Shady Willow Road, Brooklyn, Wisconsin 53521
2. On April 20, 1996, John S. Gibson contracted to purchase and purchased for valuable and reasonable consideration a 1988 Chevrolet Corvette, VIN 1G1YY2184J5117105, from David Larson, d/b/a Capitol Corvette, in the ordinary course of business. Pursuant to the purchase contract, Mr. Gibson paid \$18,000.00, plus state and county sales tax, for a total of \$18,990.00 to Capitol Corvette for the purchase of the 1988 Corvette. On April 22, 1996, the purchase contract was rewritten to include license and title fees, for a total sales price of \$19,052.50.
3. Mr. Gibson's purchase was not a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
4. The lienholder for the purchase was Telco Credit Union, doing business at 555 West Washington Avenue, Madison, Wisconsin. The Corvette is held as security for the note.
5. Mr. Gibson took possession of the Corvette from Capitol Corvette on April 22, 1996, and he has retained continuous possession of the vehicle as of the date of the stipulation.
6. In April, 1996, David Larson, d/b/a Capitol Corvette, was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin 53719. David Larson was in the business of selling motor vehicles, especially Corvettes. David Larson was the owner and sole proprietor of Capitol Corvette, and the business held Motor Vehicle Dealer License No. 1047. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).
7. Neither David Larson nor Capitol Corvette is a pawnbroker.
8. The Division of Motor Vehicles of the Wisconsin Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. The DMV also has the authority under chs. 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.
9. American Wire and Stamping Company operates a business at 7960 Chateau Court, Orland Park, Illinois 60462. In December, 1995, American Wire and Stamping Company, by Rick Svabek, its principal, consigned the vehicle to Capitol Corvette with an agreed selling price of \$20,000.00. American Wire and Stamping Company did not give the title to the vehicle to Capitol Corvette.

10. Mr. Gibson purchased the 1988 Corvette in good faith at Capitol Corvette's business premises. Mr. Gibson believed that Capitol Corvette owned this vehicle and had the authority to sell it. Capitol Corvette did not inform Mr. Gibson that the Corvette was actually owned by American Wire and Stamping Company or Mr. Svabek and did not inform Mr. Gibson that it was being sold on consignment.
11. When Mr. Gibson purchased the 1988 Corvette, he had no knowledge that the sale to him was in violation of the ownership rights or security interest of American Wire and Stamping Company or Mr. Svabek. When Mr. Gibson purchased the 1988 Corvette from Capitol Corvette, all of Mr. Gibson's dealings were with David Larson. David Larson informed Mr. Gibson that the vehicle was Mr. Larson's vehicle, and that it had been owned by a former airline pilot before he, Mr. Larson, had purchased the vehicle.
12. Mr. Gibson did not examine the vehicle's title before purchasing it from Capitol Corvette. Mr. Gibson had no knowledge that the vehicle's title was one from outside of Wisconsin.
13. When Capitol Corvette sold the subject vehicle to Mr. Gibson, Capitol Corvette failed to pay American Wire and Stamping Company or Mr. Svabek the purchase price for the vehicle, in violation of the consignment agreement. American Wire and Stamping Company may continue to assert an ownership interest in the vehicle, since it has not been paid by Capitol Corvette.
14. On or about April 22, 1996, John Gibson completed, executed and delivered to Capitol Corvette an application for title/registration for the subject vehicle. On the date of the purchase, David Larson told Mr. Gibson that he would take care of sending the plates and title in to the Department of Transportation/DMV. Mr. Larson stated that the plates and title to the vehicle would arrive at Mr. Gibson's residence in approximately one to two months. John Gibson relied in good faith on David Larson and Capitol Corvette to apply for and to secure a proper title certificate to the vehicle in John Gibson's name, listing Telco Credit Union as a lienholder. John Gibson believed in good faith that all required documentation had been prepared and completed so that he would obtain a title and registration for the subject vehicle.
15. Whenever John Gibson had previously purchased a vehicle (new or used) from a Wisconsin motor vehicle dealer, the dealer was the one who took care of applying for and securing the title to the vehicle. The titles always arrived later, after such sales.
16. On or about July 5, 1996, John Gibson contacted the Dealer Section of the DMV, asking to file a complaint against Capitol Corvette because he had not received a title or license plates for the subject vehicle.
17. The Gibsons believed in good faith that they owned the subject vehicle. When applying for a loan through Telco Community Credit Union, the Gibsons listed the 1988 Corvette as their collateral for security.
18. The DMV has declined to issue John Gibson a title and registration for the vehicle, for the reasons stated in correspondence to Mr. Gibson from Martha Gertsch, the Director of the Bureau of Vehicle Services, dated December 10, 1996.

19. John Gibson has not worked in the automotive industry. John Gibson had dealt with David Larson and Capitol Corvette prior to purchasing the 1988 Corvette. During the winter of 1995 to 1996, John Gibson stored a vehicle which he owned at Capitol Corvette. During that winter, John Gibson visited Capitol Corvette to view his vehicle, along with other vehicles. It was during such visits that Mr. Gibson became interested in the 1988 Corvette which he later purchased on April 20, 1996.

Discussion

John Gibson has applied to the DMV for a certificate of title and registration for the subject motor vehicle. Mr. Gibson purchased the vehicle from Capitol Corvette. Capitol Corvette had agreed to sell the vehicle on consignment for American Wire and Stamping Company. Because Richard Svabek informed the DMV that American Wire and Stamping Company had not been paid by Capitol Corvette for the vehicle, a question of ownership of the vehicle was raised. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to Mr. Gibson for the subject motor vehicle.¹

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial Code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, American Wire and Stamping Company entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

¹ Sec. 342.11(1), Stats., provides in relevant part.

The department shall refuse issuance of a certificate of title for any of the following reasons:

(1) The department has reasonable grounds to believe that:

(a) The person alleged to be the owner of the vehicle is not the owner.

(b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part:

(2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it, or

(b) Issue a distinctive certificate of title pursuant to s. 342.10 (4) or 342.283

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a potential security interest.²

John Gibson purchased the subject vehicle from Capitol Corvette. Pursuant to the factual stipulation, he was unaware that Capitol Corvette was selling the vehicle on consignment. Even if Mr. Gibson had been aware that the vehicle was being sold on consignment, there is no evidence that he should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

John Gibson has the burden to prove that he is the buyer in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 401.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the stipulation of facts, it appears that John Gibson is a good faith purchaser who purchased the vehicle without knowledge that the sale was in violation of the ownership rights of American Wire and Stamping Company. John Gibson purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicles.

² Sec. 402.326(3), Stats., provides in relevant part:

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of ch. 409

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of American Wire and Stamping Company's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. John Gibson is a buyer in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., John Gibson has acquired title and ownership of the subject motor vehicle.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to John Gibson for the 1988 Chevrolet Corvette, VIN 1G1YY2184J5117105, which is the subject of this matter.

Dated at Madison, Wisconsin on June 16, 1997.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By: _____

David H. Schwarz
Administrator